JUL 25 1988

JUL 19 1988

Glenn Grant
Corporation Counsel
City of Newark
City Hall, Room 316
920 Broad Street
Newark, N.J. 07102

Re: Arkansas Co. Site;
CERCLA Removal Action

Dear Mr. Grant:

Pursuant to the meeting held at your office in City Hall on January 27, 1988, with you, Janet Feldstein and myself, enclosed please find a final draft of the Memorandum of Agreement (MOA) for payment to EPA of the proceeds of sale of the above Site property based on our discussions during that meeting. For your convenience, I have redlined all changes made to my December 9, 1987 draft and enclosed all material in brackets which has been deleted.

I believe that this draft conforms to our agreement on MOA language reached during our discussions on January 27, 1988. The substantive changes made are as follows:

(1) At your request, we agreed that Paragraph 1 on page 4 would be changed to read:

> "The City's Department of Development will arrange for the sale of the Site by either public auction or designation pursuant to State statutes, to be conducted within six months of the date of this agreement."
>
> You requested this change to allow the City the option of "blighting" the property pursuant to State redevelopment law.

(2) In response to your concern that all ECRA transfer requirements be complied with, we agreed to insert a new paragraph (new Paragraph 2) providing that the 6-month period specified in Paragraph 1 may be adjusted in order to comply with New Jersey ECRA requirements, and that the sale of the Site property is contingent upon satisfaction of all federal, State and local laws and regulations applicable to such sale, including but not limited to ECRA requirements.

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(3) We agreed to change Paragraph 2 (new Paragraph 3) to require the City to provide a copy of the appraisal to EPA.

(4) You stated that the City would not sell the property without an appraisal and that you estimated that it would take several months to have an appraisal performed. However, you noted that the appraisal, if done now, could be significantly lower than it might be after the Site property is cleaned up, taking into account the potential liability of a purchaser for clean-up costs. Accordingly, we agreed to change Paragraph 3 (new Paragraph 4) to provide that the City will not approve any sale of the Site without first consulting with and obtaining the written approval of EPA, regardless of appraisal results.

(5) We agreed to change Paragraph 5 (new Paragraph 6) so that interest would only accrue on any late payment to EPA, and that no closing of a sale of the Site property by the City would take place without EPA's participation and attendance, to allow for immediate endorsement and payment over to EPA.

(6) Finally, at your request, we agreed to insert a provision (new Paragraph 12) that EPA would release any federal lien for EPA's past costs which might affect the sale of the Site property.

I note in regard to item 6, above, that, by operation of Section 122(l) of CERCLA, as amended by the Superfund Amendments and Reaathorization Act of 1986 (SARA), effective October 17, 1986, a CERCLA lien would arise with respect to the Site after that date for "all costs and damages" for which the Site owner is liable, provided that the owner has received written notice of potential liability. Since EPA has not noticed the City as a potentially responsible party (PRP), no CERCLA lien has yet arisen by statute affecting the Site, and EPA accordingly has not filed a notice of lien with respect to the Site.

However, should a purchaser obtain title prior to EPA's completion of the current removal action, that purchaser would become a PRP under CERCLA as the Site owner, and a lien could arise at such time as EPA chose to send written notice of potential liability to that purchaser. You stated that the City would not agree to a sale of the Site prior to completion of EPA's clean-up, although Ms. Feldstein pointed out that she and I had just learned within the past few days that there was now a hiatus in funding of the project and that completion might be delayed beyond the winter months.

You should be aware that a situation could arise where a potential purchaser might appear prior to completion of EPA's removal action who might be willing to undertake completion of the clean-up under a consent order with EPA. I have inserted language in new Paragraph 5 to allow for this eventuality. In that event, and provided that EPA approved the sale as provided in the MOA, EPA might consider entering into an agreement with the purchaser not to file a notice of a CERCLA lien and to release the purchaser from liability for past EPA clean-up costs, such release to be effective on the date of certification by EPA of satisfactory completion of the removal action by the purchaser. Of course, should sale of the Site, approved by EPA, take place following completion of clean-up by EPA, EPA might also consider agreeing to release the purchaser from liability for past clean-up costs.

Accordingly, I have added language to new Paragraph 12 which provides for EPA negotiations with any potential purchaser of the Site for possible release of CERCLA claims for past costs and release of CERCLA liens. Please let me know at your earliest convenience if the above and the enclosed draft accord with our discussions January 27th, 1988. I am still awaiting review of this agreement at EPA Headquarters in Washington, but as soon as you are able to approve the attached final draft, I can take steps to obtain all necessary approvals at EPA and finalize the agreement.

Once again, on behalf of EPA, I appreciate your assistance and the cooperation of the City of Newark in helping to protect public health and the environment.

Sincerely,

William C. Tucker
Assistant Regional Counsel

Enclosure

bcc: Janet Feldstein